



Town of Southern Shores

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Council Meeting
October 6, 2009
7:00 p.m.-Pitts Center

The Southern Shores Town Council met on October 6, 2009 at the Pitts Center.

The following Council Members were present: Mayor Don Smith, Brian McDonald, Jodi Hess, Kevin Stroud and Jim Pfizenmayer.

Also present were: Charlie Read, Town Manager, Ben Gallop, Town Attorney and Carrie Gordin, Town Clerk.

Mayor Smith called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance. He held a moment of silence for all the men and women serving around the world.

APPROVAL OF AGENDA

The town clerk requested the annual Dare County Solid Waste Contract be added to the Consent Agenda for approval. Council Member McDonald moved to approve the agenda as amended. Council Member Hess seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

GENERAL PUBLIC COMMENT

Mayor Smith opened the public comment.

Don Bierwerth, 249 Sea Oats Trail, stated he is a past council member and his working background was in civil engineering and he worked for twenty-five years in that field. He has knowledge in zoning and subdivision and building codes. He stated he has attended many Council meetings over the past eight years regarding his concerns about the occupancy permit posted for the Pitts Center. He stated he was told his concerns had no merit. He stated the building inspector never received a health department sign off for the change on the occupancy permit. He stated the occupancy was changed and the town did not follow proper procedure. He stated the town has never secured a building permit for the change in occupancy or complied with the zoning ordinance regarding the number of seats as far as the plumbing or parking. He stated he has filed a lawsuit through the District Attorney. Mayor Smith requested numerous times that Mr. Bierwerth had surpassed his three minutes and he needed to close his comments.

Hearing no other comments Mayor Smith closed the public comment

APPROVAL OF MINUTES-September 1, 2009

Council Member Hess moved to approve September 1, 2009 minutes as presented. Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

CONSENT AGENDA

Annual Dare County Solid Waste Contract (FY 2009-10)

The Town Attorney stated the contract is basically the same as last year except there is a slight rate increase and there is a minor change in the commercial collection schedule regarding pickups for the summer and winter schedules. The finance officer provided information showing about a 1.5% increase from last year on both residential and commercial. The rate for residential pickup is \$104.51 per hour and the hourly rate for commercial pickup is \$87.39, these rates are up from \$102.93 and \$85.79 respectively.

Council Member McDonald moved to approve the annual Dare County Solid Waste Contract with noted change. Mayor Smith seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

REPORTS

Planning Board-September 21, 2009 and Planning Advisory Group (PAG) September 8 and 21, 2009

Nancy Wendt, chairman, stated the planning board has submitted a draft wireless telecommunications ordinance to Council and requests Council set a public hearing at their November Council meeting. She stated the planning board has set an educational workshop to be held on October 14 from 7:00 p.m. to 9:00 p.m. to receive public input on the draft ordinance. She stated there are some changes to be made to the ordinance but all changes will be made following the October 14th meeting.

She explained the educational workshop is to give the public a chance to hear the proposal before it goes to public hearing where in the past the public hearing was the first time the public had a chance to hear about an issue.

Council Member Hess asked if there may be changes to the document from discussion held at the workshop then why not wait to set the public hearing until the document is ready.

Council Member McDonald asked in setting a public hearing this is the document that would be presented.

The Town Attorney stated yes but it is not abnormal for the planning department or council to address concerns or changes at the hearing but to use this draft document for the public hearing. He stated minor changes can be made at the public hearing and discussion and approval of an ordinance can be postponed to a different time but Council should act on this draft ordinance and set the public hearing on this draft ordinance.

Chairman Wendt stated over two years ago Verizon came to the planning board to discuss the placement of towers and they discussed the importance of preparing a package to be presented. She stated it has taken many months to complete the draft ordinance and there is a matter of urgency to see the ordinance adopted in that carriers also have budget constraints and would need time to prepare a package.

Mayor Smith moved to set a public hearing for the draft LDA-2009-08-01 on Wednesday November 4, 2009 in the Pitts Center. Council Member Pfizenmayer seconded. The motion passed with Mayor Smith and Council Members McDonald, Stroud and Pfizenmayer voting aye; Council Member Hess voting no and no Council Member absent.

[Clerk's Note: A copy of the Planning Board Recap September 21, 2009 report is hereby attached as Exhibit A].

[Clerk's Note: A copy of the Planning Advisory Group September 8, 2009 report is hereby attached as Exhibit B].

[Clerk's Note: A copy of the Planning Advisory Group September 21, 2009 report is hereby attached as Exhibit C].

Southern Shores Volunteer Fire Department

Fire Chief Harvey presented the monthly report and a quarterly report.

Police Department

Police Chief Kole presented the monthly report.

Council Member Hess asked Chief Kole as reported the amount of residential doors found open are they people who are out of town and are those people notified. Chief Kole stated officers have emergency numbers and if the property is a rental property the real estate company is called and the officer waits until someone comes to secure the house.

Southern Shores Civic Association (SSCA)

Leo Holland, vice president, reported the SSCA has approved the new bylaws but there will changes. He reported Paul Kapinos is the new Beatification chairman. He said the board is working on the 2010 budget. He also reported the SSCA workboat was stolen but was recovered with no damage. He stated they are having trouble at the marina with vandalism. He stated the cut diseased pine trees placed at the Hillcrest parking lot will be burned on October 10. Mayor Smith stated there will be a memorial service held at the Hillcrest parking lot on Saturday morning.

Fire Chief Harvey corrected Mr. Holland explaining the trees can not be burned as directed by the Division of Air Quality. He stated the DAQ requires that everyone within a thousand feet of the burn site must sign off on this type of debris removal and that is not going to happen.

Chicahauk Property Owners Association

Jim Kranda reported around 250 people attended their annual picnic. He stated Dominion Power has completed an upgrade but they need to fix sidewalks they damaged.

Canal Maintenance Dredging Project Update

Tom Bennett, project manager, reported the town only received one bid at the bid opening on October 28 and three bids are required. He stated there will be a second bid opening on October 8. He stated the submerged aquatic vegetation (SAV) survey requires the SAV's to be relocated and this process is on going to meet the Army Corps of Engineer requirements. He stated Mayor Smith, Council Member Pfizenmayer and he met with two people from Martin's Point and members of the boat club at the marina to explain the main canal dredge project as well as other dredge questions.

Council Member Hess stated if the bids come in Council will need to meet as a special meeting and suggested a date or two be selected now. Council agreed to tentatively set October 15 at noon to meet if needed.

OLD BUSINESS-None

NEW BUSINESS-None

OTHER ITEMS

Town Manager

The Town Manager stated there was some confusion about the burning of the diseased pine trees. He thanked Chief Harvey and Deputy Chief Shrader for helping him out on this. He stated the fire department is not involved in this debris removal. He stated the fire department does not set fires they put them out. He stated the SSVFD was never to be involved in the burning. He stated the Division of Air Quality will not allow this type of burn. He stated this was set up by the SSCA and the dead trees have been taken to the Hillcrest parking lot and he is waiting to hear from the SSCA on the cost estimates and the town will share in the expense as a 'good partner' for the removal of the trees. He will have more information to Council at the October 27 meeting.

The Town Manager stated he and Mayor Smith took the challenge that "Real Men Do Wear Pink" to acknowledge October as Breast Cancer Awareness Month. He extended this challenge to all managers, mayors and others with the campaign that all men wear pink every Friday during the month of October. He stated Kermit Skinner, the manager of Manteo sent him a pink T-shirt with the Town of Manteo logo on it. He stated the police department will wear pink ribbons.

Town Attorney

Mayor

Mayor Smith stated his family, as well as many others have been exposed to breast cancer in some way and he supports all women getting mammograms. He encouraged the men to get their pink T-shirt.

Council-None

PUBLIC COMMENT

Mayor Smith opened the public comment section.

Peter Bruck, 15 Soundview Trail, stated his background has been in architecture and engineering for many years and he is concerned about Mr. Bierwerth's comments. He stated Council should not ignore the comments and look at the certificate of occupancy on the building and put the issue to bed and not take the chance of a possible law suit.

The Town Attorney responded to Mr. Bruck by saying Mr. Bierwerth has come before Council many times and he has been told many times his concerns do not have merit. He stated the previous town attorney was instructed not to spend additional funds to address Mr. Bierwerth concerns. He stated Mr. Bierwerth has sent his allegations to the state district attorney and the town has received no legal notification of being sued.

Hearing no other comments Mayor Smith closed the public comment section.

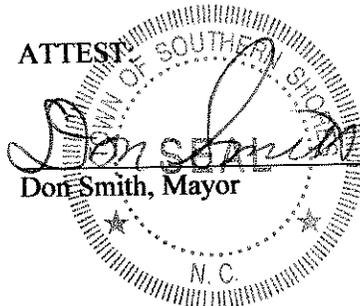
Hearing no other regular business Mayor Smith moved to go into closed session pursuant to N.C.G.S. 143-318.11. (a) (3) to consult with the attorney retained by the Town in a manner preserving the attorney-client privilege with regard to matters not yet in litigation, (6) to discuss a confidential personnel matter

relating to a public employee or officer and section, (1) to prevent the disclosure of information that is privileged or confidential pursuant to the common law attorney-client privilege and NCGS 143-318.10 (e) and (5) to establish or to instruct staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract or proposed contract for the acquisition of the following real property: 1) the parcels of property commonly known as Loblolly Marina, North Marin, East Side and the Azalea Land Property under the record ownership of the Southern Shores civic Association, Inc. for the purpose of obtaining a lease or an easement for the use in facilitating access to the Town's canals for the contractor engaged to perform the Town's canal dredging project and 2) the parcel of property known as 267 Hillcrest Drive under the record ownership of Warren B. Davis for the purpose of obtaining a lease or an easement for use in facilitating access to the Town's canals for the contractor engaged to perform the Town's canal dredging project. Council Member McDonald seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

Upon returning to open session Mayor Smith moved to approve Resolution 2009-10-07 as presented. Council Member Pfizenmayer seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

Hearing no other business Mayor Smith moved to adjourn the meeting at 10:00 p.m. Council Member Pfizenmayer seconded. The motion passed with Mayor Smith and Council Members McDonald, Hess, and Stroud and Pfizenmayer voting aye; no council member voting no and no Council Member absent.

ATTEST



Respectfully submitted:


Carrie Gordin, Town Clerk

Exhibit A

To: Southern Shores Town Council (Don Smith, Brian MacDonald, Jodi Hess, Jim Pfizenmayer, Kevin Stroud); Town Attorney (Ben Gallop)

Copies: Town Manager (Charlie Read)

Town Staff (Pat Forrester, Carrie Gordon, Alvin Rountree, Merrie Smith, Bonnie Swain)

Planning Board (Mike Florez, Bill Gleason, Larry Lawhon, Bob Palombo, Jay Russell, Nancy Wendt, Sam Williams and ETJ Rep, Ed Overton)

From: Nancy Wendt, Planning Board Chair

Date: September 29, 2009

Re: Recap, Planning Board Meeting September 21, 2009

Attach: Proposed Wireless Ordinance

RECOMMENDED ACTIONS FOR THE TOWN COUNCIL:

APPROVE the proposed ordinance for wireless communications facilities (see attached) and schedule a public hearing for November 2009. The pre-public hearing workshop and discussion roundtable to review this ordinance with the community is scheduled for October 14, 2009 from 7:00pm to 9:00pm at the Pitts Center.

MEETING RECAP

- I. **CALL TO ORDER:** Chairperson Wendt called the meeting to order at 7:00pm. Planning Board Members Nancy Wendt, Jay Russell, Mike Florez, Bob Palombo and Sam Williams, alternate members Bill Gleason and Larry Lawhon, and ETJ Representative Ed Overton were present. Also in attendance was Planning Board Administrative Assistant Merrie Smith.
- II. **APPROVAL OF AGENDA:** Mike Florez motioned to approve the agenda. Sam Williams seconded the motion. The motion passed unanimously.
- III. **APPROVAL OF MINUTES:** Sam Williams motioned to approve the Minutes from the May 18, 2009 Planning Board meeting. Mike Florez seconded the motion. The motion passed unanimously.
- IV. **PUBLIC COMMENT:**

Jim Winebarger, Facilities Director, Dare County Schools, presented a proposed wind generation facility to be constructed at the Kitty Hawk Elementary School (KHES) in Southern Shores. The proposed project is funded by NC DENR under the Renewable Energy Discovery Zone. The state has created this program to provide elementary school students in all schools across the state with the opportunity to learn about alternative energy options through hands-on demonstration projects. The proposed

wind turbine and solar panel projects at KHES will be connected to the power grid through relays with Dominion Power. Mr. Winebarger stated that KHES is ready to go and would like to have this facility operational by the end of this month.

V. PERMIT APPLICATIONS

None

VI. OTHER BUSINESS

WIRELESS FACILITIES

1. Wireless Team Lead Larry Lawhon reviewed the changes that Ben Gallop, Town Attorney, made to the DRAFT Wireless Ordinance that the Board previously recommended to the Town Council. These included:
 - a. Ensuring consistency with N.C.G.S. 160A-400.50 et seq which limits the Town's ability to review items related to business or coverage issues of the providers putting in the towers.
 - b. Bringing all cross references up to date with the Town Ordinance as re-codified July 1, 2009

One typographical error was identified on page 8 line 36; delete the first "at least." The Board had no other questions or comments on the text of the proposed ordinance.

A motion was made by Sam Williams and seconded by Bob Palombo to send this revised DRAFT of the proposed ordinance to the Town Council and to request a Public Hearing date be tentatively scheduled for November 4, 2009. Prior to this Public Hearing Larry Lawhon will conduct a public workshop on the DRAFT Ordinance to give the community an opportunity to review, discuss and comment on the DRAFT language of the ordinance prior to the required Public Hearing. The motion passed unanimously.

VII. OTHER ITEMS

None

VIII. ANNOUNCEMENTS:

None

IX. REGULAR MEETINGS:

Regularly scheduled meetings for the next month are:

PAG working session October 5, 2009 at 7pm at the Pitts Center

- Proposed Wireless Ordinance Workshop (Larry Lawhon)
- Proposed Wind Generation Educational Workshop (Mike Florez)

Planning Board meeting October 19, 2009 at 7pm at the Pitts Center

- Permit Applications as required

PAG working session October 19, 2009 following PB meeting at the Pitts Center

X. ADJOURNMENT:

Ed Overton made a motion and Mike Florez seconded the motion to adjourn.
The Planning Board meeting adjourned at 7:35 pm.

Exhibit B

To: Southern Shores Town Council (Don Smith, Brian MacDonald, Jodi Hess, Jim Pfizenmayer, Kevin Stroud); Town Attorney (Ben Gallop)

Copies: Town Manager (Charlie Read)

Town Staff (Pat Forrester, Carrie Gordon, Alvin Rountree, Merrie Smith, Bonnie Swain)

Planning Board (Mike Florez, Bill Gleason, Larry Lawhon, Bob Palombo, Jay Russell, Nancy Wendt, Sam Williams and ETJ Rep, Ed Overton)

From: Nancy Wendt, Planning Board Chair

Date: September 29, 2009

Re: Recap, PAG Working Sessions September 8 and 21, 2009

PAG MEETING RECAP SEPTEMBER 8, 2009

The Planning Advisory Group working session convened at 7:50pm. Planning Board Members Nancy Wendt, Mike Florez and Bob Palombo were present. Also in attendance was Planning Board Administrative Assistant Merrie Smith.

TRANSPORTATION PLAN (Bob Palombo)

At the Town Council meeting on August 25, 2009 the Council "accepted" the Transportation Report but stopped short of approving action. The question and answer period revealed that there is still some confusion regarding transportation infrastructure issues and options. In order to strengthen understanding of transportation issues and to prepare the Council to decide which if any actions to take, PAG will prepare a LR Transportation System Plan. This document will include written narratives to "connect-the-dots" as clearly as possible for the Council and for members of the community. This LR Plan and its related project proposals will be integrated with other LR Plans for the purposes of identifying project interdependencies and recommending an integrated set of project priorities to the Council and the CIP Committee.

WIND GENERATION PLAN (Mike Florez)

Mike Florez, project lead, reported that the Wind Team has defined their tasks required to develop a proposed Wind Generation Plan. One or more team members have volunteered to complete each item. The Wind Generation Plan schedule for the next two months is as follows.

July 28, 2009	3:00pm	kickoff meeting
September 3, 2009	3:00pm	working session
October 8, 2009	3:00pm	working session
October 22, 2009	3:00pm	working session

The PAG adjourned at 8:15pm.

Exhibit C

PAG MEETING RECAP SEPTEMBER 21, 2009

The Planning Advisory Group working session convened at 7:00pm. Planning Board Members Nancy Wendt, Jay Russell, Mike Florez, Bob Palombo and Sam Williams, alternate members Bill Gleason and Larry Lawhon, and ETJ Representative were present. Also in attendance was Planning Board Executive Assistant Merrie Smith.

TRANSPORTATION SYSTEM PLAN (Bob Palombo)

Bob Palombo reviewed the status of the Transportation System Plan for those who were not at the September 8th PAG working session. A DRAFT table of contents was circulated and there were no additions or corrections noted. Bob also walked the PAG through the proposed review process for all projects that have an impact on the Transportation System. This includes all roads, bridges and stormwater projects. Bob estimates that a DRAFT Transportation System Plan will be available for PAG review and integration with other LR Plans before the end of the 4th quarter.

On behalf of the Planning Board and the PAG, Bob Palombo asked Dave Peckens to continue chairing the Roads Evaluation Committee and providing input to the Transportation System Plan. Dave Peckens agreed and plans to reconvene the Committee shortly.

WIND GENERATION PLAN (Mike Florez)

Mike Florez reviewed the status of his team's activities and passed out his most recent RECAP. Based on the increasing interest in wind including the proposed demonstration project at the Kitty Hawk Elementary School, a question was raised about the possibility of a permit application prior to the scheduled completion of the Wind Generation Plan. Mike will keep Ben Gallop, the Town Attorney, apprised of all work in progress in the event that an applicant chooses to challenge the current ordinance which expressly prohibits all wind generation facilities. Mike will also discuss ways to accelerate the project schedule with his team members.

STORMWATER MANAGEMENT PLAN (Jay Russell)

Jay Russell reported that he has received comments on the DRAFT stormwater guidelines that he developed based on Quible & Associates' water basin data for Southern Shores from Robert Mc Clendon, Alvin Rountree and Joe Anlauf. He will incorporate their changes and suggestions and prepare a revised DRAFT for PAG review and integration with other LR Plans before the end of the 4th quarter.

At Jay's request, Joe Anlauf, Quible & Associates', prepared an estimate to write up the Stormwater Management Plan based on the Stormwater Policy Advisory Committee's Report. Joe estimates that it will cost approximately \$250.00 to complete this work. The PAG unanimously supports Jay's recommendation to have Joe Anlauf perform this work. Merrie Smith will follow up with Charlie Read, Town Manager, to prepare the required purchase order.

WIRELESS PLAN (Larry Lawhon)

Larry Lawhon reported that a public workshop to review the DRAFT Wireless Ordinance prepared by Ben Gallop, Town Attorney, has been scheduled for Wednesday, October 14, 2009 from 7:00pm to 9:00pm at the Pitts Center. Larry reminded the PAG that the objective of this workshop is to give the community an opportunity to review, discuss and comment on the DRAFT language of the ordinance prior to the required Public Hearing. If any problems with the DRAFT text surface during this roundtable discussion, there is time for the PAG / PB and/or the Town Attorney to recommend revisions to the Town Council prior to the Public Hearing.

Larry Lawhon is the Southern Shores representative to the Chamber of Commerce Create-the-Future project. Larry reported that during the last two meetings, this group continued to discuss the proposed creation of a municipal broadband capability for Dare County. To date there are no specific plans, design standards or schedules for this project.

CAMA LUP UPDATE PROJECT (Sam Williams)

Sam Williams is editing the text of the draft LUP update and identifying changes that need to be made to the maps. He expects to have a complete document ready for review some time in November. He will circulate a new draft to the Planning Board / PAG and the Town Council for comments as soon as it is ready

UPCOMING MEETINGS & AGENDAS:

PAG working session October 5, 2009 at 7pm at the Pitts Center

- Proposed Wireless Ordinance Workshop (Larry Lawhon)
- Proposed Wind Generation Educational Workshop (Mike Florez)

Planning Board meeting October 19, 2009 at 7pm at the Pitts Center

- Permit Applications as required

PAG working session October 19, 2009 following PB meeting at the Pitts Center

Meeting Adjourned 9:30 PM

Exhibit D

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF SOUTHERN SHORES, NORTH CAROLINA APPROVING CERTAIN CLOSED SESSION MINUTES (Resolution #2009-10-07)

WHEREAS, the Town Council of the town of Southern Shores is required by the North Carolina General Statutes to keep a general account and minutes of its closed sessions; and

WHEREAS, the Town Council of the Town of Southern Shores must occasionally consider the draft minutes of its closed session and vote on the approval of the same; and

WHEREAS, draft minutes of closed sessions prepared by the Town Clerk for the Town of Southern Shores exist for meetings which occurred prior to the seating of the currently elected Town Council which have not been approved, reviewed or otherwise finalized by the Town Council; and

WHEREAS, the Town Council desires to adopt said closed session meeting minutes prepared by the Town Clerk; and

WHEREAS, the Town Council desires to direct the Town clerk to review said closed meeting minutes and to prepare a resolution for presentation at the next regularly scheduled Town Council meeting addressing which closed session meeting minutes should be unsealed and released to the public because doing so will no longer frustrate the purpose of the closed session related to the minutes.

NOW, THEREFORE BE IT RESLOVED, the Town Council hereby adopts any and all draft minutes of closed sessions occurring prior to December 31, 2005 which have been prepared by the Town Clerk and directs the Town Clerk to prepare a resolution for presentation at the next regularly scheduled Town Council meeting addressing which closed session meeting minutes of closed sessions occurring prior to December 31, 2005 should be unsealed and released to the public because doing so will no longer frustrate the purpose of the closed session related to the minutes.

Adopted this ___ day of _____, 2009

Don Smith, Mayor Smith

Attest:

Carrie Gordin, Town Clerk